

In the Court of Appeals of the State of Alaska

Solomon Tomas James,
Appellant,

v.

State of Alaska,
Appellee.

Court of Appeals No. **A-13582**

Order

Date of Order: **2/25/2020**

Trial Court Case No. **3AN-18-02174CR**

Before: Allard, Chief Judge, and Wollenberg and Harbison, Judges.

Solomon Tomas James appeals the superior court's refusal to modify his bail conditions. James argues that the court erred by failing to independently assess the bail application and by denying his application based only on the court's finding that the previous bail was "appropriately set."

We agree with James. We therefore remand James's case to the superior court and direct the superior court to conduct an independent review of James's bail request.

Facts and proceedings

On March 8, 2018, James was indicted for twenty-four felonies, including first-degree sexual assault, second-degree sexual assault, and second-degree sexual abuse of a minor. When the indictment against James was returned in open court, the superior court issued a warrant for his arrest. The bail set on the arrest warrant was a \$250,000 cash appearance bond, a \$50,000 cash performance bond, electronic monitoring by the pretrial enforcement division, and no contact with minors. After James was arrested, at his felony first appearance hearing, bail was set in the amount written on the warrant.

On October 15, 2018, James appeared in court to request a temporary release in order to attend his grandmother’s funeral. The State did not oppose James’s proposal, which included a 10% posting to the court of a \$10,000 cash appearance bond, a \$2,500 cash performance bond, house arrest with passes for emergency medical and the funeral only, electronic monitoring through Alaska Defendant Monitoring, and supervision by third-party custodians. Bail would revert to the initial conditions upon remand. The court approved James’s request and set a remand date for October 17, 2018. James remanded as ordered without incident.

On January 7, 2019, James appeared in court for a bail hearing. At that hearing, James asked the superior court to reduce the monetary bond and to release him to house arrest secured by electronic monitoring. The superior court summarily denied this request, finding that there was “no change in circumstances.” The court did not issue a written order and did not orally explain why the conditions of release previously imposed were necessary to fulfill the purposes of bail.

Almost eleven months later — on November 25 and December 5, 2019 — James again appeared in court for a bail hearing. After listening to the arguments of counsel, the court declined to modify the bail. The court explained that James’s bail “was set on an arrest warrant . . . on March 8, 2018,” and while an “infinite number [of bail proposals] might be appropriate,” this “doesn’t mean that bail initially was not appropriately set.” Without making any further findings, the court denied James’s bail application.

This appeal followed.

Why we remand James’s case for a new bail review hearing

James contends that he has never received an independent assessment of the conditions of release that were set on his arrest warrant. The record supports James’s contention.

Alaska Statute 12.30.006(c) provides:

A person who remains in custody 48 hours after appearing before a judicial officer because of inability to meet the conditions of release shall, upon application, be entitled to have the conditions reviewed by the judicial officer who imposed them. If the judicial officer who imposed the conditions of release is not available, any judicial officer in the judicial district may review the conditions.

In *Torgerson v. State*, we held that this statute requires a judicial officer to conduct an independent assessment of the defendant’s conditions of release at a first bail review hearing.¹

Under AS 12.30.006(d)(1), a defendant is generally not entitled to a subsequent bail review hearing unless the defendant provides “new information not considered at the previous review.” But at a first bail review hearing, a defendant who remains in custody is “entitled” to have the conditions reviewed by a judicial officer; the defendant need not present any information that was not previously known at the time of the first appearance.²

¹ *Torgerson v. State*, 444 P.3d 235, 237 (Alaska App. 2019).

² *See* AS 12.30.006(c).

Additionally, AS 12.30.006(f) requires a judicial officer to “issue written or oral findings that explain the reasons the officer imposed the particular conditions of release or modifications or additions to conditions previously imposed.” This provision precludes a court from simply relying on, or deferring to, findings made at an earlier hearing when bail was initially set.

Although James was released temporarily for his grandmother’s funeral, the original bail was reinstated when he remanded himself to custody. As a result, those bail conditions should have been reviewed for the purposes of pretrial release on January 7, 2019. But at that hearing, the judge did not conduct the requisite independent assessment of James’s conditions of release. Instead, on January 7, 2019, and again on December 5, 2019, the judge summarily denied James’s bail request without making additional findings. The court simply adopted the original bail set by the judge who had issued the arrest warrant, without considering whether the particular bail conditions were the least restrictive necessary to reasonably assure James’s appearance and the safety of the victims and the community.³

Because the superior court was required to independently assess James’s conditions of release, and because we are unable to say that James received the bail review hearing to which he was entitled, we remand this case to the superior court to conduct this independent review.

³ See AS 12.30.011(b) (“If a judicial officer determines that the release under (a) of this section will not reasonably ensure the appearance of the person or will pose a danger to the victim, other persons, or the community, the officer shall impose the least restrictive condition or conditions that will reasonably ensure the person’s appearance and protect the victim, other persons, and the community.”).

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Conclusion

For the reasons explained here, we **REMAND** this case to the superior court for an independent assessment of James's bail proposal.

We do not retain jurisdiction.

Clerk of the Appellate Courts

Sarah Anderson, Deputy Clerk

cc: Court of Appeals Judges
Judge Michael Wolverton
Trial Court Clerk

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